



## DEPARTMENT OF ENERGY

### 10 CFR Part 430

#### EERE-2022-BT-DET-0006

#### RIN 1904–AF31

### Energy Conservation Program: Proposed Determination of Portable Electric Spas as a Covered Consumer Product

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notification of proposed determination and request for comment.

**SUMMARY:** The U.S. Department of Energy (“DOE”) has tentatively determined that portable electric spas qualify as a covered product under Part A of Title III of the Energy Policy and Conservation Act, as amended (“EPCA”). DOE has tentatively determined that coverage of portable electric spas is necessary and appropriate to carry out the purposes of EPCA and that the average U.S. household energy use for portable electric spas is likely to exceed 100 kilowatt-hours per year.

**DATES:** Written comments, data, and information are requested and will be accepted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–DET–0006, by any of the following methods:

1. *Federal eRulemaking Portal*: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
2. *E-mail*: to [PortableElecSpas2022DET0006@ee.doe.gov](mailto:PortableElecSpas2022DET0006@ee.doe.gov). Include docket number EERE–2022–BT–DET–0006 in the subject line of the message.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VI of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID-19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the COVID-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

*Docket*: The docket, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at [www.regulations.gov/docket/EERE-2022-BT-DET-0006](http://www.regulations.gov/docket/EERE-2022-BT-DET-0006). The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI, “Public Participation,” for further information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

**FOR FUTHER INFORMATION CONTACT:** Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-9870. E-mail: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-3593. E-mail: *kristin.koernig@hq.doe.gov*.

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

## **SUPPLEMENTARY INFORMATION:**

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## **I. Statutory Authority**

EPCA<sup>1</sup> authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B<sup>2</sup> of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain consumer products, referred to generally as “covered products.”<sup>3</sup> In addition to specifying a list of consumer products that are covered products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. For a given consumer product to be classified as a covered product, the Secretary must determine that:

- (1) Classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA; and
- (2) The average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (“kWh”) (or its British thermal unit (“Btu”) equivalent) per year. (42 U.S.C. 6292(b)(1))<sup>4</sup>

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<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116-260 (Dec. 27, 2020).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

<sup>3</sup> The enumerated list of covered products is at 42 U.S.C. 6292(a)(1)–(19).

<sup>4</sup> DOE has defined “household” to mean an entity consisting of either an individual, a family, or a group of unrelated individuals, who reside in a particular housing unit. For the purpose of this definition:

(1) Group quarters means living quarters that are occupied by an institutional group of 10 or more unrelated persons, such as a nursing home, military barracks, halfway house, college dormitory, fraternity or sorority house, convent, shelter, jail or correctional institution.

(2) Housing unit means a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but does not include group quarters.

When attempting to add additional consumer product types to the “covered products” classification, DOE must first determine whether these criteria from 42 U.S.C. 6292(b)(1) are met. Once such a determination is made, the Secretary may prescribe test procedures to measure the energy efficiency or energy use of such product. (42 U.S.C. 6293(b)(1)(B)) Furthermore, once a product is determined to be a covered product, the Secretary may set standards for such product, subject to the provisions in 42 U.S.C. 6295(o) and (p), provided that DOE determines that the four additional criteria at 42 U.S.C. 6295(l) have been met. Specifically, 42 U.S.C. 6295(l) requires the Secretary to determine that:

- (1) The average household energy use of the products has exceeded 150 kWh per household for a 12-month period;
- (2) The aggregate 12-month energy use of the products has exceeded 4200 gigawatt-hours;
- (3) Substantial improvement in the energy efficiency of products of such type is technologically feasible; and
- (4) Application of a labeling rule under 42 U.S.C. 6294 is unlikely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

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(3) Separate living quarters means living quarters:

(i) To which the occupants have access either:

(A) Directly from outside of the building, or

(B) Through a common hall that is accessible to other living quarters and that does not go through someone else's living quarters, and

(ii) Occupied by one or more persons who live and eat separately from occupant(s) of other living quarters, if any, in the same building. 10 CFR 430.2.

## II. Current Rulemaking Process

DOE has not previously conducted a rulemaking for portable electric spas. In a presentation provided to DOE on December 6, 2021, the Pool and Hot Tub Alliance (“PHTA”) asserted that portable electric spas meet the EPCA thresholds of significance required for the Secretary to classify a consumer product as a covered product under 42 U.S.C. 6295(l) and 42 U.S.C. 6292(b)(1).<sup>5</sup> DOE independently examined the PHTA’s assertion that portable electric spas meet EPCA’s significance thresholds in section IV.B of this document and tentatively finds the PHTA’s claims to be credible. Therefore, DOE has decided to proceed with this proposed determination. If, after public comment, DOE issues a final determination of coverage for this product, DOE may prescribe both test procedures and energy conservation standards for this product. DOE will publish a final decision on coverage as a separate notice, which is an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking. *See* 10 CFR part 430 subpart C appendix A section 5(c). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. *Id.* DOE is not proposing test procedures or energy conservation standards as part of this proposed determination. If DOE proceeds with a rulemaking to establish energy conservation standards, DOE would determine if portable electric spas satisfy the provisions of 42 U.S.C. 6295(l)(1) during the course of that rulemaking.

## III. Scope of Coverage

Portable electric spas are factory-built hot tubs or spas that are intended for the immersion of people in heated, temperature-controlled water that is circulated in a closed system. Portable electric spas are not covered products currently. A wide range of portable electric spa

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<sup>5</sup> Portable Electric Spas, information provided to DOE from PHTA, California Investor-Owned Utilities and Appliance Standards Awareness Project, [www.regulations.gov/docket/EERE-2022-BT-DET-0006-0001](http://www.regulations.gov/docket/EERE-2022-BT-DET-0006-0001)

products are available on the market, including standard spas, exercise spas, combination spas, and inflatable spas.

To help inform its proposed scope of coverage, DOE reviewed existing classifications of portable electric spas developed by the PHTA—the industry trade group for portable electric spas—and used in California Energy Commission (“CEC”) regulations.<sup>6</sup> The following paragraphs discuss DOE’s examination of these sources and present the proposed definition that would provide the basis for coverage of portable electric spas under EPCA.

PHTA publishes a standard method of test, certified by American National Standards Institute (“ANSI”), for measuring the performance of portable electric spas, titled ANSI/ Association of Pool and Spa Professionals (“APSP”)/International Code Council (“ICC”) 14 2019, American National Standard for Portable Electric Spa Energy Efficiency (“ANSI/APSP/ICC-14 2019”).<sup>7</sup> PHTA describes this standard as providing recommended minimum guidelines for testing the energy efficiency of factory-built residential portable electric spas. The standard methods included in ANSI/APSP/ICC-14 2019 provide a means to compare and evaluate the energy efficiency of different models of portable electric spas in conditions relevant to product use. Section 3 of ANSI/APSP/ICC-14 2019 defines “Portable Electric Spa” as “a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water at the time of sale or sold separately for subsequent attachment.” ANSI/APSP/ICC-14 2019 also defines “Spa” as “a product intended for the immersion of persons in temperature-controlled water circulated in a closed system, and not intended to be drained and filled with each use. A spa usually includes a filter, a heater (electric, solar, or gas), a pump or pumps, and a

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<sup>6</sup> See section 1602(g)(2) of Article 4 of Division 2 of Title 20 of the California Code of Regulations (“CCR”).

<sup>7</sup> ANSI/APSP/ICC-14 2019 is available at: <https://webstore.ansi.org/standards/apsp/ansiapspicc142019>.

control, and may also include other equipment, such as lights, blowers, and water sanitizing equipment.” The term “hot tub” is defined in ANSI/APSP/ICC-14 2019 as a synonym of “spa.”

In addition, Section 3 of ANSI/APSP/ICC-14 2019 defines the following categories of portable electric spas:

(1) *Standard Spa*: A portable electric spa that is not an inflatable spa, an exercise spa, or the exercise spa portion of a combination spa.

(2) *Exercise Spa*: (Also known as a swim spa): Variant of a portable electric spa in which the design and construction includes specific features and equipment to produce a water flow intended to allow recreational physical activity including, but not limited to, swimming in place.

(3) *Combination Spa*: A portable electric spa with two separate and distinct reservoirs, where (a) one reservoir is an exercise spa; (b) the second reservoir is a standard spa; and (c) each reservoir has an independent water temperature setting control.

(4) *Inflatable Spa*: A portable electric spa where the structure is collapsible and is designed to be filled with air to form the body of the spa.

The CEC defines portable electric spa and most of the spa categories consistently with ANSI/APSP/ICC-14 2019,<sup>8</sup> though CEC does not define “spa”. For the purpose of this analysis, DOE evaluated portable electric spas as a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water at the time of sale or sold separately for subsequent attachment, as defined by ANSI/APSP/ICC-14 2019 and the CEC. DOE proposes to adopt this

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<sup>8</sup> See section 1602(g)(2) of Article 4 of Division 2 of Title 20 of the CCR. There is some variation in the definition of exercise spa as compared to ANSI/APSP/ICC-14 2019.

definition to inform stakeholders while DOE continues its analysis. DOE notes that this proposed definition would exclude units that are site-assembled, such as portable electric spas that are permanently installed in the ground or attached to a pool, and spas sold with methods of water heating other than electricity, such as propane or natural gas spa heaters or wood-fired hot tubs.

As stated previously in this document, EPCA authorizes DOE to classify a type of consumer product as a covered product upon making certain determinations. EPCA defines a “consumer product” as any article (other than an automobile) of a type – (A) which in operation consumes, or is designed to consume, energy; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(1)) As such, when considering the potential scope of coverage, DOE does not consider whether an individual product is distributed in commerce for residential or commercial use, but whether it is *of a type* of product distributed in commerce for residential use.

DOE seeks feedback from interested parties on its proposed definition and scope of coverage of portable electric spas.

#### **IV. Evaluation of Portable Electric Spas as a Covered Product Subject to Energy Conservation Standards**

The following sections describe DOE’s preliminary evaluation of whether portable electric spas fulfill the criteria for being added as a covered product pursuant to 42 U.S.C. 6292(b)(1). As stated previously, DOE may classify a consumer product as a covered product if:

(1) Classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA; and

(2) The average annual per-household energy use by products of such type is likely to exceed 100 kWh (or its Btu equivalent) per year. 42 U.S.C. 6292(b)(1)

*A. Coverage Necessary or Appropriate to Carry Out the Purposes of EPCA*

After evaluating the estimated shipments of portable electric spas and the potential availability of technologies that can be employed to improve the efficiency of portable electric spas, DOE has preliminarily determined that coverage of portable electric spas is necessary and appropriate to carry out the purposes of EPCA, which include:

(1) To conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses; and

(2) To provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. (42 U.S.C. 6291(4) – (5))

Although portable electric spas are not currently subject to energy conservation standards under EPCA, as discussed, several states have adopted standards, starting with California in 2004 and including Arizona, Colorado, Connecticut, Maine, Massachusetts, Nevada, Oregon, Rhode Island, Vermont, and Washington.<sup>9</sup> According to the DOE Energy Information Administration’s Residential Energy Consumption Survey (“RECS”), there were 8.4 million spas in the U.S. in 2015.<sup>10</sup> DOE also obtained data from PKData, and, based on that data, DOE estimates that in,

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<sup>9</sup> <https://appliance-standards.org/product/portable-electric-spas>.

<sup>10</sup> <https://www.eia.gov/consumption/residential/data/2015/>. DOE would note that this number likely includes spas that do not meet the proposed definition of portable electric spa.

2019, the existing stock of residential hot tubs (as separate from the stock of spas in residential pools) was approximately 5.5 million, with approximately 95% of these being electric spas.<sup>11</sup> Based on these same data, DOE also estimates that approximately 230,000 electric spas were shipped in 2019. *Id.*

DOE requests data and information regarding the current annual shipments of portable electric spas and the installed base of portable electric spas, specifying the scope of products included in any such estimates (*e.g.*, standard, exercise, combination, inflatable, *etc.*).

In 2018, the CEC published a final staff report analyzing efficiency standards and marking for spas.<sup>12</sup> That report examined potentially available technologies that can be employed to improve the efficiency of portable electric spas. The report included several options but stated that improved insulation (in terms of improved insulation coverage, type and quantity) within the tub walls and of the tub cover offer the greatest opportunity for improved efficiency. The report also mentioned further attainable efficiency improvements through, but not limited to, improved spa cover design, and improved pump and motor system design within the spa itself. The findings of this report indicate that technologies exist, and are already available in the market, to reduce the energy consumption of portable electric spas.

DOE requests comment on the availability of technologies for improving energy efficiency of portable electric spas. Specifically, DOE requests comment on the available

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<sup>11</sup> P.K. Data Inc. 2020 Pool Heaters Market Data: Custom Compilation for Lawrence Berkeley National Laboratory. 2020. Alpharetta, GA. (Last accessed July 1, 2021.) <https://www.pkdata.com/reports-store.html#/>.

<sup>12</sup> Final Staff Report, Analysis of Efficiency Standards and Marking for Spas, 2018 Appliance Efficiency Rulemaking for Spas Docket Number 18-AAER-02 TN 222413. Available online at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=222413&DocumentContentId=31256>.

technologies for improving energy efficiency as they apply to the different types of portable electric spas under consideration.

### *B. Average Household Energy Use*

Additionally, DOE analyzed whether portable electric spas would meet the average annual per-household energy use criteria in 42 U.S.C. 6292(b)(1)(B). For this determination, DOE estimated the average household energy use threshold for portable electric spas, in households that use the product, using power consumption data reported in the CEC database (“MAEDbS”).<sup>13</sup> The ratings of certified portable electric spas contained in MAEDbS demonstrate significant variation in the total power consumption among different models of standard, combination, and exercise spas that are currently available. MAEDbS is the only publicly available source that provides energy consumption data for portable electric spas of which DOE is aware. For each model, MAEDbS lists the standby power in watts (“W”), along with other relevant capacity and performance metrics. MAEDbS certification requires that standby power is measured according to ANSI/APSP/ICC-14 2019, the required California test procedure as specified in the CCR at 20 CCR 1604(g)(2). For portable electric spas measured according to the test procedure, standby mode is the predominant mode of spa operation and includes power use to maintain the set temperature and to circulate and filter the water. Power use in standby mode may also include some ancillary power use, e.g., to power a controller. CEC estimated that standby mode represents 75 percent of the energy consumed by a portable

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<sup>13</sup> CEC Modernized Appliance Efficiency Database System. Accessed December 17, 2021. Available online at <https://cacertappliances.energy.ca.gov>.

electric spa, with the remainder being startup mode (when the spa is heating up to its operating temperature) and active mode (when the spa's water jets are operating).<sup>14</sup>

CEC has set standards specifying maximum allowable standby power consumption as a function of spa volume separately for: (1) standard spas and exercise spas capable of maintaining 100 degrees F during the test; (2) exercise spas; and (3) inflatable spas.<sup>15</sup> Table IV.1 shows the reported range of power consumption by volume for the different spa categories specified in the database for models. DOE further divided the metrics in Table IV.1 by the volume bins defined by the CEC in its report.<sup>16</sup>

**Table IV.1 Reported Power Consumption by Spa Category and Volume**

CEC Index	Volume Range (gallons)	Model Count	Standby Power (W)		
			Minimum	Average	Maximum
Standard Spas					
1A	100 < 180	38	82	130	169
1B	181 < 300	289	40	156	215
2	301 < 600	568	75	204	295
3	601 < 900	7	208	277	350
5	1201 < 1500	3	275	375	458
7	1801 < 2100	6	559	588	602
8	2101 < 2400	3	401	508	561
9	> 2401	14	414	424	555
Inflatable Spas					
1A	100 < 180	8	221	237	239
1B	1181 < 300	7	232	233	233
Exercise Spas					
3	601 < 900	2	212	212	212
4	901 < 1200	14	163	278	445

<sup>14</sup> Final Staff Report, Analysis of Efficiency Standards and Marking for Spas, 2018 Appliance Efficiency Rulemaking for Spas Docket Number 18-AAER-02 TN 222413. Available online at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=222413&DocumentContentId=31256>.

<sup>15</sup> See section 1605.3(g)(7)(A) of Article 4 of Division 2 of Title 20 of the CCR.

<sup>16</sup> Final Staff Report, Analysis of Efficiency Standards and Marking for Spas, 2018 Appliance Efficiency Rulemaking for Spas Docket Number 18-AAER-02 TN 222413 at p. 35, Available online at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=222413&DocumentContentId=31256>.

5	1201 < 1500	26	265	391	491
6	1501 < 1800	47	263	424	551
7	1801 < 2100	24	217	452	555
8	2101 < 2400	14	413	525	657
9	> 2401	6	437	462	474
<b>Combination Spas (Standard Spa Portion)</b>					
1B	181 < 300	7	160	180	207
2	301 < 600	25	145	201	243
<b>Combination Spas (Exercise Spa Portion)</b>					
6	1501 < 1800	22	162	373	563
7	1801 < 2100	10	234	382	467

During the process of updating the standards for California in 2018, CEC reported a duty cycle of 5,040 hours per year for inflatable spas (which are intended for seasonal use) and 8,760 hours per year for standard, exercise, and combination spas.<sup>17</sup> And according to RECS, spas that are in use are used on average 7.4 months per year.<sup>18</sup> However, DOE notes that the spas may be kept full and in standby mode the entire year regardless of active use of the spa.

Using average power consumption for a standard spa of 194 W (the lowest average of the categories in MAEDbS) and 8760 hours per year of use, DOE estimates an average standby energy consumption of 1699 kWh per year for portable electric spas. DOE notes that use of the minimum standby power found in MAEDbS (40 W) and the estimated 5040 hours per year of use for inflatable spas (and similar to 7.4 months of use found in RECS) exceeds 200 kWh per year energy use. In addition, the rest of the country may have shipments of portable electric spas that exceed California's and other states' maximum power consumption standards.<sup>19</sup>

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<sup>17</sup> *Ibid.*

<sup>18</sup> U.S. Energy Information Administration, Residential Energy Consumption Survey (RECS), 2015, <https://www.eia.gov/consumption/residential/data/2015/>.

<sup>19</sup> See PHTA information provided to DOE for a list of states with minimum efficiency requirements, [www.regulations.gov/docket/EERE-2022-BT-DET-0006](http://www.regulations.gov/docket/EERE-2022-BT-DET-0006)).

In a presentation provided to DOE in December 2021<sup>20</sup>, PHTA also provided an estimate of household energy use based on RECS. PHTA estimated that portable electric spas consume 5.755 billion kWh/year in the U.S. and there are 3.673 million households in the U.S. that operate portable electric spas regularly. This estimate results in average energy consumption of 1567 kWh per year per household, which is similar to DOE's estimate of 1699 kWh per year.

For these reasons, although there may be variation in distribution due to climate or spa size that might impact national average power consumption as compared to the estimate of 194 W (either higher or lower), DOE has tentatively determined that the average annual per-household energy use for portable electric spas is very likely to exceed 100 kWh per year, satisfying the provisions of 42 U.S.C. 6292(b)(1).

DOE requests comment on the national representativeness of the spa volume bins shown in Table IV.1 of this document. DOE requests comment or information on whether these volume bins are applicable to all types of spas.

DOE requests data and information on the range of standby power consumption of spas in non-regulated markets.

DOE requests data and information regarding standby power consumption at the different volumes for all types of portable electric spas.

DOE request data and information regarding active power consumption at the different volumes for all types of portable electric spas.

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<sup>20</sup> PHTA information provided to DOE for a list of states with minimum efficiency requirements, [www.regulations.gov/docket/EERE-2022-BT-DET-0006](http://www.regulations.gov/docket/EERE-2022-BT-DET-0006)

### *C. Preliminary Determination*

Based on the foregoing, DOE has tentatively determined that: classifying portable electric spas, as proposed to be defined in this document, is necessary and appropriate to carry out the purposes of EPCA; and the average annual per-household energy use by portable electric spas is likely to exceed 100 kWh per year. As such, DOE has preliminarily determined to classify portable electric spas as a covered product under Part A of Title III of EPCA, as amended.

DOE requests comment on whether classifying portable electric spas as a covered product is necessary and appropriate to carry out the purposes of EPCA.

DOE also requests comment on its preliminary determination that the average annual per-household energy use by portable electric spas is likely to exceed 100 kWh per year.

## **V. Procedural Issues and Regulatory Review**

### *A. Review Under Executive Order 12866*

This proposed determination has been determined to be not significant for purposes of Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Management and Budget (“OMB”) did not review this proposed determination.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O.

13272, “Proper Consideration of Small Entities in Agency Rulemaking” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website ([www.energy.gov/gc/office-assistant-general-counsel-legislation-regulation-and-energy-efficiency](http://www.energy.gov/gc/office-assistant-general-counsel-legislation-regulation-and-energy-efficiency)).

This proposed determination would not establish test procedures or energy conservation standards for portable electric spas. If adopted, the proposed determination would only positively determine that future standards may be warranted and should be explored in an energy conservation standards and test procedure rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. Therefore, DOE initially concludes that the impacts of the proposed determination would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

### *C. Review Under the Paperwork Reduction Act*

Manufacturers of covered products must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control

number 1910-1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. As noted previously, this proposed determination, if made final, would not establish any testing requirements or energy conservation standards for portable electric spas that would be subject to the PRA.

#### *D. Review Under the National Environmental Policy Act of 1969*

DOE is analyzing this proposed determination in accordance with the National Environmental Policy Act (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part 1021). DOE’s regulations include a categorical exclusion for rulemakings that are strictly procedural. 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this rulemaking qualifies for categorical exclusion A6 because it is a strictly procedural rulemaking and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final determination.

#### *E. Review Under Executive Order 13132*

E.O. 13132, “Federalism” 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on federal agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking

discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and had tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. DOE notes, however, that if the agency determines that the products at issue in today's proposed determination are covered and energy conservation standards are subsequently promulgated for these products, any existing State standards would be preempted by EPCA. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

#### *F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," imposes on federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, to be given to the law (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal

standard for affected conduct, (4) specifies the retroactive effect, if any, to be given to the law, (5) defines key terms, either explicitly or by reference to other statutes that explicitly define those terms, and (6) addresses other important issues affecting clarity and general draftsmanship of legislation under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of those standards. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at [www.energy.gov/sites/prod/files/gcprod/documents/umra\\_97.pdf](http://www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf).

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

#### *H. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Review Under Executive Order 12630*

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### *J. Review Under the Treasury and General Government Appropriations Act of 2001*

Section 515 of the Treasury and General Government Appropriation Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24,

2019), DOE published updated guidelines which are available at [www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf](http://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf). DOE has reviewed this proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (“OIRA”) at OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under E.O. 12866, or any successor Executive order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed determination to classify portable electric spas as covered products is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

## *L. Information Quality*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (“OSTP”), issued its Final Information Quality Bulletin for Peer Review (“the Bulletin”). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government’s scientific information. DOE has determined that the analyses conducted for this proposed determination do not constitute “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.” 70 FR 2667 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this proposed determination.

## **VI. Public Participation**

### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this notification of proposed determination no later than the date provided at the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via [www.regulations.gov](http://www.regulations.gov).* The [www.regulations.gov](http://www.regulations.gov) webpage will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter

representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit information to *www.regulations.gov* for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Anyone submitting comments through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be

publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. With this instruction followed, the cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Facsimile submissions will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

*B. Issues on Which DOE Seeks Comments*

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

- Proposed definition and scope of coverage of portable electric spas;
- Data and information regarding current annual shipments of portable electric spas and the installed base of portable electric spas, specifying the scope of products included in any such estimates (*e.g.*, standard, exercise, combination, inflatable, *etc.*);
- Availability or lack of availability of technologies for improving energy efficiency of portable electric spas;
- Data and information regarding annual energy use estimates for portable electric spas;
- Whether classifying portable electric spas as a covered product is necessary or appropriate to carry out the purposes of EPCA; and
- Whether the average annual per-household energy use by portable electric spas is likely to exceed 100 kWh per year.

DOE is interested in receiving views concerning other relevant issues that participants believe would affect its ability to establish test procedures and energy conservation standards for portable electric spas.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination.

## **VII. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this notification of proposed determination.

### **Signing Authority**

This document of the Department of Energy was signed on February 9, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on February 10, 2022.

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Treena V. Garrett  
Federal Register Liaison Officer,  
U.S. Department of Energy

